

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2000-506-C - ORDER NO. 2001-076

JANUARY 26, 2001

IN RE: Application of 360networks(USA), Inc. for a)	ORDER	✓ DW
Certificate of Public Convenience and)	GRANTING	
Necessity to Provide Resold and Facilities-)	CERTIFICATE FOR	
based Local Exchange Telecommunications)	LOCAL SERVICES	
Services in the State of South Carolina.)		

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of 360networks(USA)inc. ("360networks" or the "Company") requesting a Certificate of Public Convenience and Necessity to provide resold and facilities-based local exchange telecommunications services in the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1999) and Section 253 of the Telecommunications Act of 1996.

By letter, the Commission's Executive Director instructed 360networks to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The proposed Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. 360networks complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC") on December 1, 2000.

On December 8, 2000, counsel for SCTC filed with the Commission a Stipulation in which 360networks stipulated that it would seek authority in non-rural local exchange (“LEC”) service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until 360networks provided written notice of its intent prior to the date of the intended service. 360networks also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. 360networks agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to 360networks to provide local services provided the conditions contained in the Stipulation are met. The Stipulation was entered into the evidence of the hearing, and the Staff requested that the Stipulation be approved by the Commission. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on January 17, 2001, at 2:30 p.m., in the Commission’s Hearing Room. The Honorable William Saunders, Chairman, presided. 360networks was represented by Scott A. Elliott, Esquire. Adelaide D. Kline, Staff Counsel, represented the Commission Staff. Andreas J. Corley, Auditor III, Utilities Department, and Colanthia B. Alvarez, Rates Analyst, Utilities Department, testified on behalf of the Commission staff.

Ron Gustafson, Assistant General Counsel, appeared and testified in support of the Application. Mr. Gustafson testified he is in charge of regulatory, rights of way and litigation issues for 360networks. Upon receiving certification from the Commission, 360networks seeks to provide resold and facilities-based local exchange telecommunications services to customers

located in non-rural local exchange carriers' service areas of South Carolina. 360networks was granted authority to provide long distance telecommunications services in the State of South Carolina on March 27, 2000, under the name of Worldwide Fiber Networks, Inc., Order No. 2000-0286. The Company's certification was amended to reflect its new name, 360networks, on August 16, 2000, Order No. 2000-666.

According to the record, 360networks is an independent, facilities-based provider of fiber optic communications network products and services. By the end of 2001, 360networks expects its network to consist of approximately 56,300 route miles in North America, Europe and South America, including an undersea cable between North America and Europe, and an undersea cable between South America and North America. The Company has recently agreed, subject to execution of definitive agreements, to acquire collocation facilities or site rights in ten cities in North America comprising approximately 2.9 million square feet. The record further states that 360networks intends to expand its network to provide connectivity on a global basis. In Europe, 360networks expects its network to cover approximately 10,600 long-haul route miles, providing connectivity among approximately thirty-five major population centers. The Company's 7,600 route mile fully-protected undersea cable between North America and Europe will have the capacity to be a 1.92 terabits per second ("tbps"), self-healing ring that will connect landing sites in Boston, Halifax, Dublin and Liverpool and to major gateway cities in Europe and North America, including London and New York. The Company's planned 14,000 route mile fully-protected undersea cable between South America and North America will have the capacity to be a 1.28 terabits per second, self-healing ring that will be able to offer city-to-city connectivity between six major population centers in Brazil, Venezuela, Bermuda and the United States. 360networks also plans to expand the geographic reach of its network to Asia.

Initially, 360networks intends to provide non-switched dedicated and private line, high capacity fiber optic transmission capacity and access services which will allow its customers to obtain fiber optic transmission capacity to develop their own networks. 360networks plans to offer its fiber optic transmission services to carriers, such as incumbent local exchange carriers, competitive local exchange carriers, and Internet service providers. In South Carolina, 360networks intends to provide all forms of local exchange telecommunications services throughout the State, as it eventually expects to offer a broad range of voice and data local exchange services to business customers throughout the State through: (I) the use of its own network facilities; (ii) the resale of services and facilities provided by certificated carriers and (iii) some combination thereof.

Mr. Gustafson addressed 360networks' managerial, financial, and technical ability to provide local exchange telecommunications services in South Carolina. Mr. Gustafson explained his background and other officers of the Company's background in telecommunications. 360networks was incorporated in Nevada. Its company headquarters are located in Lakewood, Colorado. The Company has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation. The company is a wholly-owned subsidiary of 360networks, inc., a publicly held Canadian corporation.

The officers of 360networks include Mr. Gustafson, Gregg Maffei, Jimmy Byrd, Ron Stevenson, David Love, Gary Anderson and Bruce Tinney. Mr. Gustafson received a law degree from the University of San Francisco in 1991. He practiced law in the private sector for five years before he became associated three years ago with Worldwide Fiber Networks, Inc., the company that became 360networks. Mr. Gustafson stated that the senior management team of

360networks has substantial experience in the telecommunications industry. He said Jimmy Byrd serves as the Chief Operations Officer, and has previously been in senior management positions concerning operations, financing and the building of telecommunications systems. Mr. Gustafson stated that Gregg Maffei is the Chief Executive Officer and came to 360networks from Microsoft where he served as Chief Financial Officer. Prior to joining Microsoft, Mr. Maffei served as Vice President at Citicorp Venture Capital. Ron Stevenson, Vice Chairman, was previously President of 360networks and is a Director of Ledcor, Inc. David Love has been Senior Vice President, Network Operations, since September 1999. He has over twenty-eight years experience in the telecommunications industry, both domestic and international. Bruce Tinney has been Senior Vice President, Infrastructure Sales, since the Company's inception. Gary Anderson is Vice President of Operations and Terry Bate is Director of Client Services. Mr. Gustafson will be the company's regulatory contact person. Mr. Bate will be the Company's customer service contact person.

The record reveals that 360networks will bill its customers directly. The Company's name, address and toll-free telephone number appear on the bill. Additionally, the Company will operate a customer service department. The toll-free telephone number is (877) 735-7366. Terry Bate, Director of Client services, will oversee 360networks' Customer Care department. He can be contacted through the Company's corporate offices at 143 Union Boulevard, Suite 300, Lakewood, Colorado 80228, telephone (303) 854-5000.

Regarding the Company's financial ability to offer telecommunications services in South Carolina, Mr. Gustafson testified that 360networks' financial ability has been evidenced by its audited financial statements that were submitted with the Application.

Andreas J. Corley, Commission Staff witness, testified that the Company submitted December 31, 1998 and 1999 financial statements with its Application. He testified that the December 31, 1999, information indicates the Company appears to be financially strong and in a position to fund 360networks' operations. He stated that long-term debt makes up some 51% of the total liabilities and equity which is not that unusual. He further stated the current ratio reflected on the December 31, 1999, financial statements was 3.68 which means that there were more than enough current assets to meet all of the current liabilities at the date of the balance sheet. The Company requested the Commission's permission to be exempt from any record-keeping rules or regulations that might require the Company to maintain its financial records in conformance with the Uniform System of Accounts. According to the record, 360networks currently maintains its book of accounts in accordance with the Generally Accepted Accounting Principles ("GAAP").

360networks also requested a waiver of S.C. Code Ann. Regs. 103-631 (1976) so that the Company will not be required to publish local exchange directories. According to the record, 360 networks will make arrangements with the incumbent local exchange carriers whereby the names of 360networks' customers will be included in the directories published by the incumbent local exchange carriers. At the hearing, the company additionally requested a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976) so that 360networks can maintain its records outside of South Carolina. The Company wishes to maintain its books and records at its headquarters in Lakewood, Colorado.

The testimony reveals 360networks's presence in South Carolina as a telecommunications service provider will have a positive effect on the public interest.

Upon receiving certification from the Commission, Mr. Gustafson testified 360networks will abide by and comply with the Commission's rules and regulations and Commission Orders in its operations in South Carolina. Further, the testimony reveals 360networks has never had an application for a certificate of public convenience and necessity denied. He testified that the Company had been the subject of an investigation in the State of California. He explained that the investigation had to do with the administrative procedural review of a construction project that the Company was involved with in California during 1998 and 1999, and that the project was 99% completed with no environmental impact. He said the Company anticipated satisfactory resolution of the investigation in the very near future. Further, he testified 360networks will comply with South Carolina laws and with all applicable rules and regulations of the Commission. Finally, Mr. Gustafson testified 360networks had not provided any intrastate telecommunications services within the State of South Carolina.

Upon consideration of the application and the record from the hearing, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. 360networks is organized as a corporation under the laws of the State of Nevada and has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation.
2. 360networks wishes to provide local exchange services within the State of South Carolina.
3. The Commission finds that 360networks possesses the technical, financial, and managerial resources sufficient to provide the service requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 1999).

4. The Commission finds that 360networks's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1999).

5. The Commission finds that 360networks will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 1999).

6. The Commission finds that 360networks will provide services which will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 1999).

7. The Commission finds that the provision of local exchange service by 360networks "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1999).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to 360networks to provide competitive intrastate local exchange services within the State of South Carolina. The terms of the Stipulation between 360networks and the SCTC (attached hereto as Exhibit 1) are approved and adopted as a portion of this Order. Any proposal to provide local services to rural service areas is subject to the terms of the Stipulation. In accordance with the Stipulation, 360networks may not provide any local service to a customer located in a rural incumbent LEC's service area, unless or until 360networks provides such rural incumbent LEC and the Commission, written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. The Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while it conducts any

proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon a showing of good cause. It is specifically provided that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Order in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications as they may be entitled. If, after notice from 360networks that it intends to serve a customer located in a rural incumbent LEC's service area, and the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or if the Commission institutes a proceeding of its own, no service may be provided by 360networks in a rural incumbent LEC's service area pursuant to this Order without prior and further Commission approval.

2. 360networks shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. Any proposed change in the rates reflected in the tariff for local services which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1999).

3. 360networks shall resell or provide the services of only those companies authorized to provide telecommunications services in South Carolina by this Commission.

4. 360networks shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

5. 360networks shall file annual financial information in the form of annual reports and gross receipt reports as required by the Commission. The annual report and the gross receipt

report will necessitate the filing of intrastate information. Therefore, 360networks shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form the Company shall use to file annual financial information with the Commission can be found at the Commission's web site at www.psc.state.sc.us/forms. This form is entitled "Annual Report for Competitive Local Exchange Carriers". Additionally, pursuant to the Commission's regulations, the Company shall file a CLEC Service Quality Quarterly Report with the Commission. The proper form for this report is Form #110 and can be found at www.psc.state.sc.us/forms/default.htm.

6. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs 360networks to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, 360networks shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

7. The Company shall, in compliance with Commission regulations, designate and maintain authorized utility representatives who are prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the names of the authorized representatives to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

360networks shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. (Attachment A shall be utilized for the provision of this information to the Commission.) Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

8. 360networks requested waivers from certain Commission regulations and requirements. Specifically, 360networks requested waivers from (1) the requirement found in Rule 103-631 to publish and distribute local exchange directories, (2) the requirement to keep its books and records in South Carolina, and (3) any requirement to maintain books and records in compliance with the USOA. The Commission grants the request for waiver from the requirement to publish directories as 360networks has indicated that it will contract with the incumbent local exchange company to include the customers of 360networks in the directory listing of the ILEC directory. The Commission also grants the Company's request for a waiver of the requirement that books and records be kept in South Carolina. 360networks has permission to maintain its books and records at its corporate headquarters in Colorado. Further, the Commission grants 360networks's request that it be allowed to keep its books and records in accordance with GAAP

rather than the USOA. 360networks is directed to comply with all Commission regulations, unless a regulation is specifically waived by the Commission.

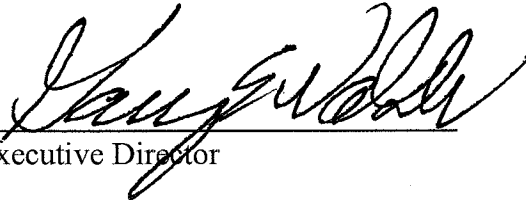
9. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2000-506-C

Re: Application of 360networks (USA) inc. for)
a Certificate of Public Convenience and)
Necessity to Provide Resold and Facilities-)
based Local Exchange Telecommunications)
Services in the State of South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and 360networks (USA), inc. ("360networks") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose 360networks' Application. SCTC and 360networks stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to 360networks, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. 360networks stipulates and agrees that any Certificate which may be granted will authorize 360networks to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. 360networks stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. 360networks stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until 360networks provides such rural incumbent LEC and the Commission with written notice

of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, 360networks acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. 360networks stipulates and agrees that, if 360networks gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then 360networks will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. 360networks acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

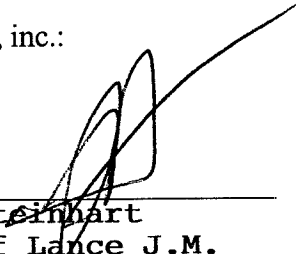
7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and 360networks, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. 360networks agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. 360networks hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 6th day of December, 2000.

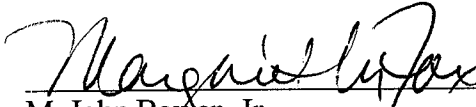
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Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2000-NUMBER-C

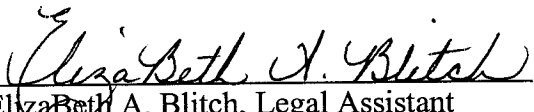
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based Local Exchange Telecommunications)
Services in the State of South Carolina)
_____)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blich, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

Lance J. M. Steinhart, Esquire
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December 8, 2000

Columbia, South Carolina